



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
J. RAY RISSE)

OPINION ON PETITION FOR REHEARING

On February 28, 1984, we sustained the Franchise Tax Board's action in denying the claim of J. Ray Risser for refund of penalties assessed in the amount of \$306.13 for the year 1980. The penalties were assessed for underpayment of estimated taxes and late payment of taxes. Subsequently, appellant filed a petition for rehearing in which he argues that the penalty for underpayment of estimated tax should be excused pursuant to Revenue and Taxation Code section 18685.8, subdivision (c)(1). That section provides that a penalty shall not be imposed if the total of all payments of estimated tax exceeds the tax shown on the return of the individual for the preceding taxable year. The amount shown on appellant's amended 1979 tax return would allow him to come within the section 18685.8, subdivision (c)(1) exception. However, appellant's amended return was filed after the due date for the original return. We have held that if an amended return is filed on or before the due date for the original return, the amount of the underpayment is determined by reference to the tax on the amended return. However, if the amended return is filed after the due date of the original return, the amount of the underpayment of estimated tax is determined by reference to the tax shown on the original return. (See Appeal of Durao International Corporation, Cal. St. Bd. of Equal., May 21, 1980.) Since appellant did not make payments of estimated tax equal to the tax shown on his original return for the preceding year, the exception provided by section 18685.8, subdivision (c)(1) is inapplicable.

Appeal of J. Ray Risser

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18596 of the Revenue and Taxation Code, that the petition of J. Ray Risser for rehearing of his appeal from the action of the Franchise Tax Board in denying his claim for refund of penalties assessed in the amount of \$306.13 for the year 1980, be and the same is hereby denied, and that our order of February 28, 1984, be and the same is hereby affirmed.

Done at Sacramento, California, this 1st day of August , 1984, by the State Board of Equalization, with Board Members Mr. Nevins, Mr. Dronenburg, Mr. Collis, Mr. Bennett and Mr. Harvey present.

<u>Richard Nevins</u>	, Chairman
<u>Ernest J. Dronenburg, Jr.</u>	, Member
<u>Conway H. Collis</u>	, Member
<u>William M. Bennett</u>	, Member
<u>Walter Harvey*</u>	, Member

*For Kenneth Cory, per Government Code section 7.9